



OFFICE of the ATTORNEY GENERAL
GREG ABBOTT

February 21, 2003

Mr. Leonard V. Schneider
Ross, Banks, May, Cron & Cavin, P.C.
2 Riverway, Suite 700
Houston, Texas 77056-1918

OR2003-1161

Dear Mr. Schneider:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 176815.

The City of League City (the "city"), which you represent, received a request for: 1) the names of reserve or part-time police officers whose TCLEOSE commission was held by the city from 1980 to the present; 2) the dates their commissions were held; 3) their TCLEOSE status during this period; and 4) a list of schools attended by these officers, including dates and location. You state that the city does not have responsive information concerning eight former police reserve officers. We note that the Public Information Act (the "Act") does not require the city to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3 (1986). In regard to the submitted information, you claim that it is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 excepts from disclosure information deemed confidential by statute, such as section 143.089 of the Local Government Code. Section 143.089 provides in pertinent part:

(a) The director [of the fire fighters' and police officers' civil service] or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

- (1) a commendation, congratulation, or honor bestowed on the fire fighter or police officer by a member of the public or by the employing department for an action, duty, or activity that relates to the person's official duties;
- (2) any misconduct by the fire fighter or the police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department in accordance with this chapter; and
- (3) the periodic evaluation of the fire fighter or police officer by a supervisor.

....

(f) The director or the director's designee may not release any information contained in a fire fighter's or police officer's personnel file without first obtaining the person's written permission, unless the release of the information is required by law.

(g) A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer. The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file.

Section 143.089 contemplates two different types of personnel files, a file that must be maintained by the city's civil service director or his designee and another file that may be maintained by the city's police department for its own use. Local Gov't Code § 143.089(a), (g). Section 143.089(a) specifies certain types of information that must be contained in the civil service file; such records are not made confidential under section 143.089 and thus are subject to release unless an exception to required public disclosure applies. *See* Local Gov't Code § 143.089(f); Open Records Decision No. 562 at 6 (1990). However, information maintained in a police department's personnel file pursuant to section 143.089(g) is confidential and must not be released. *City of San Antonio v. Tex. Attorney Gen.*, 851 S.W.2d 946, 949 (Tex. App.--Austin 1993, writ denied).

You state that the submitted information is maintained in the city's police department's internal personnel files pursuant to section 143.089(g). Based on the city's assertion that the submitted information is maintained in the city's police department's personnel files, we find

that the submitted information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code.¹

However, some reserve officers may not avail themselves of the protection under section 143.089. Section 143.083 provides that a person employed as a temporary employee under this section is not eligible to become a full-fledged civil service employee. *See Gov't Code § 143.083(4)*. However, section 143.084 provides that a police officer who has been continuously employed as a temporary employee under section 143.083 since December 31, 1969, has the full status of a civil service employee with all the rights and privileges granted by section 143.005. *See Gov't Code § 143.084(a)*. Upon review of the submitted information, one of the reserve police officers was employed in 1968. Therefore, if this reserve police officer has been continuously employed since December 31, 1969, he has full civil service status, and the submitted information related to this employee is confidential pursuant to section 143.089(g) of the Local Government Code. Accordingly, this information must be withheld.

If the remainder of the reserve police officers are section 143.083 temporary employees, they are not civil service employees. Therefore, they are not entitled to the rights and privileges of Chapter 143 of the Local Government Code. In order to be subject to section 143.089, the employees in question must be police officers. Section 143.003(5) defines a police officer as a member of a police department or other peace officer who was appointed in substantial compliance with this chapter or who is entitled to civil service status under section 143.005, 143.084, or 143.103. Because a temporary police officer employed under section 143.083 is not a police officer as defined by section 143.003(5) and is not a full-fledged civil service employee, section 143.089(g) is not applicable to the requested information related to these employees, and it must be released.

If section 143.089 of the Local Government Code is inapplicable and the submitted information must be released, section 552.130 of the Government Code excepts information from disclosure that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See Gov't Code § 552.130*. Accordingly, the city must withhold the Texas driver's license information we have marked pursuant to section 552.130 of the Government Code.

In summary, we conclude that the submitted information is confidential pursuant to section 143.089(g) of the Local Government Code and must be withheld under section 552.101 of the Government Code. However, if the reserve police officers are section 143.083 temporary employees, we conclude that: 1) you must withhold the information related to the reserve police officer that was employed in 1968 only if he has been continuously employed since December 31, 1969; and 2) with the exception of the Texas

¹We note that to the extent any of the requested information is maintained in the city's civil service files pursuant to section 143.089(a), it must be released under section 143.089(f) of the Local Government Code.

driver's license information that must be withheld under section 552.130 of the Government Code, you must release the remainder of the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Montgomery Meitler".

W. Montgomery Meitler
Assistant Attorney General
Open Records Division

WMM/lmt

Ref: ID# 176815

Enc: Submitted documents

c: Mr. C.W. deBoisblanc Jr.
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League City, Texas 77573
(w/o enclosures)